

News from Ed Markey

United States Congress

Massachusetts Seventh District

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MARKEY TAKES AIM AT EFFORTS TO UNDERMINE MEDICAL PRIVACY BY BUSH ADMINISTRATION

Markey-Dingell-Waxman Bill Protects Patients' Privacy

Washington, DC: Representative Ed Markey (D-MA), a senior member of the House Energy and Commerce Committee and Co-Chair of the House Privacy Caucus, will introduce tomorrow the Stop Taking Our Health Privacy (STOHP) Act, which restores key patient privacy protections weakened by Bush Administration modifications to the medical privacy rule. These modifications are effective as of today, October 15, 2002. Rep. Markey will be joined in introducing the STOHP Act by Representative Henry Waxman (D-CA) and Representative John Dingell (D-MI), ranking members of the Government Reform and Energy and Commerce Committees, respectively.

Rep. Markey, "The STOHP Act will put a stop to the Bush Administration's actions that have left patients with little privacy and even less recourse when their privacy has been sold or invaded."

The **STOHP Act** addresses three key privacy loopholes opened by the Bush modifications:

1. **Consent:** The Bush Administration modifications remove patients' right to consent to the use and disclosure of their private medical information for the purposes of health care treatment, payment, and so-called "health care operations," a category including commercial activities such as the sale or merger of an HMO. A patient's right to consent was at the core of the Clinton Administration's privacy rule. The Bush Administration hollowed out this core by removing the consent requirement for a wide range of activities, including a one-time initial consent for re-use of information for business purposes that have nothing to do with treatment of the patient.
2. **Marketing:** The Bush Administration modifications permit marketing agreements that can turn your pharmacist into a secret agent for drug companies. Specifically, the modifications allow drug companies to pay your pharmacist or doctor to make new treatment recommendations based on your medical history and send you unsolicited product mailers, without informing you of the fee the drug company has paid to your health care provider or presenting you the opportunity to opt-out of receiving such communications in the future. The Clinton Administration's privacy rule required that patients be informed when their provider is compensated for sending such mailers and included additional requirements to ensure that patients were informed of the details relating to the source of these communications.
3. **Disclosures to FDA-regulated entities such as drug companies:** The Bush modifications allow drug companies broad access to patient information without prior consent: The Clinton Administration's rule contained a provision that allowed patient information to be disclosed to drug companies without consent for a limited list of public health related activities, such as for the purpose

of reporting serious side effects from a prescription drug to the FDA. The Bush Administration replaced this narrow list with a broader exemption that allows nonconsensual disclosure of patient information to drug companies for a wide range of activities, which may include marketing campaigns.

Additional information, including the full text of the STOHP Act, will be available October 16, 2002 at www.house.gov/markey.

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